

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

DOCKET NO. 1:20-mj-416

6 vs.

7 KALEB FRANKS,

8 Defendant.

9 /

10  
11 TRANSCRIPT OF DETENTION HEARING

12 BEFORE UNITED STATES MAGISTRATE JUDGE SALLY J. BERENS

13 GRAND RAPIDS, MICHIGAN

14 October 13, 2020

15  
16 Court Reporter:

Glenda Trexler  
Official Court Reporter  
United States District Court  
685 Federal Building  
110 Michigan Street, N.W.  
Grand Rapids, Michigan 49503

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20 Proceedings reported by machine shorthand, transcript produced  
21 by computer-aided transcription.  
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16 Grand Rapids, Michigan

17 October 13, 2020

18 2:04 p.m.

19 P R O C E E D I N G S

20 *THE COURT:* All right. We are back on the record to  
21 take up the question of bond for Mr. Franks. Mr. Kessler and  
22 Mr. Hakes are here on behalf of the United States and  
23 Mr. Graham is here with his client.

24 Is the government still seeking detention?

25 *MR. KESSLER:* Yes, Your Honor.

1           *THE COURT:* You may proceed.

2           *MR. KESSLER:* Well, Your Honor, I'm not going to be  
3 putting on any additional evidence for this particular  
4 defendant. I will be relying on exhibits that are already in  
5 the record. So I don't know if you want to wait --

6           *THE COURT:* It would be helpful to me -- I think I  
7 have the information from the Complaint well in hand -- it  
8 would be helpful for me to summarize any -- and I have gone  
9 through the exhibits -- but it would be helpful if you could  
10 point out --

11          *MR. KESSLER:* Absolutely.

12          *THE COURT:* -- in case I've missed anything among the  
13 exhibits and any additional evidence that was put on the record  
14 regarding Mr. Franks today.

15          *MR. KESSLER:* Yes, Your Honor. So I would be relying  
16 on a couple of the exhibits here. First off, Exhibit 4 is the  
17 one where Mr. Franks, after a discussion about kidnapping or  
18 any other plots, he says "I'm up for anything --"

19               Exhibit 18 --

20          *THE COURT:* Hang on just a second.

21          *MR. KESSLER:* Yes.

22          *THE COURT:* All right.

23          *MR. KESSLER:* "Up for anything as long as it's  
24 well-planned" I believe were the words.

25          *THE COURT:* Uh-huh.

1           *MR. KESSLER:* In Exhibit 18, that's an audio exhibit.  
2 The testimony was that the agent believed he was the one who  
3 said "Kidnapping, arson, death, I don't care." To be fair, it  
4 was --

5           *THE COURT:* It was difficult to hear.

6           *MR. KESSLER:* It was difficult to hear. But the  
7 words were said. But more to the point, the agent was clear  
8 that he thought it was Mr. Franks, but he couldn't be a hundred  
9 percent sure. It could have been one of the other people. But  
10 he was part of the discussion.

11           In Exhibit 10, this is the part where everybody is  
12 what they called The Bonfire Chat. On page 3 of that  
13 Mr. Franks was worried about people finding out about their  
14 coded language. He was the one who first proposed that maybe  
15 they had a fed, was concerned about there being a fed listening  
16 to their encrypted chats.

17           On page 12 of Exhibit 10 -- let me know -- I can see  
18 you're writing, so let me know when you're ready.

19           *THE COURT:* All right. Page 12.

20           *MR. KESSLER:* On page 12 of Exhibit 10 he's the one  
21 suggesting that they may have been compromised so they should  
22 henceforth operate only in their own small unit.

23           He's also worried that if they have their codes, they  
24 probably know what their faces look like. "They" being the  
25 feds know what their faces look like.

1           And then in Exhibit 19 on page 3, he was -- I can  
2       wait for you to get to that.

3           *THE COURT:* All right.

4           *MR. KESSLER:* So on Exhibit 19 on page 3, this is  
5       part of the discussion about whether they should do a public  
6       armed protest at the Capitol, and he, among everybody else,  
7       said, "Hard pass on anything in the public." So clearly  
8       concerned about people actually seeing his face. Those are the  
9       exhibits I'll be relying on.

10           Do you want to take any argument while I'm standing  
11       here?

12           *THE COURT:* Let's have Mr. Graham bring in whatever  
13       evidence he wants to put in the record, and then we'll go to  
14       argument.

15           *MR. KESSLER:* Yes, Your Honor.

16           *MR. GRAHAM:* Your Honor, I would -- I'm going to  
17       proceed in a second here by way of proffer. But I would also  
18       note, I guess, more by the way of identifying evidence as  
19       opposed to argument, on the testimony I suspect the Court  
20       was -- had no trouble following whatever theme I was attempting  
21       to establish here in questioning. But in terms of evidence, I  
22       think it's clear that there's less certainty about many of the  
23       statements in the Complaint than it may appear at first blush.  
24       And there appears to be no question about Mr. Franks being a  
25       follower and not a leader of this.

1           In regard to that, then, I would move to -- and I'll  
2     present argument at the appropriate time.

3           *THE COURT:* Before you should begin, Mr. Graham, I  
4     will note that I do have your memorandum that you filed and  
5     have reviewed that as well.

6           *MR. GRAHAM:* Thank you, Your Honor. And I maintain  
7     the position that this is not a presumption case. The only  
8     authority that we found -- and actually I didn't cite Ouedraogo  
9     from this district, but it says the same thing, for the same  
10    charge, it's not a presumption case regarding bond. And if the  
11    government disagrees, I know they will tell you that. But it  
12    is not a presumption case.

13           So by way of proffer, I would adopt the points made 1  
14    through -- 1 through 19 of my written proffer. And for  
15    purposes of evidence to be presented to the Court, since I  
16    filed it under restricted access and I had good reason for it,  
17    I'd simply adopt those points by way of proffer and ask the  
18    Court to refer to those. The government, of course, has a copy  
19    of that, and if they have any dispute or objection. But that  
20    would be what I would offer. My brief comment on being a  
21    follower just evidentiary-wise, and then the proffer, and the  
22    fact that this is not a presumption case. So I would -- that's  
23    what I would have by way of evidence. And then would welcome  
24    the chance to argue a bit when appropriate.

25           *THE COURT:* All right. Mr. Kessler, any additional

1 evidence?

2 *MR. KESSLER:* No, Your Honor.

3 *THE COURT:* All right. Then I'll take argument.

4 *MR. KESSLER:* So just relying on what we heard during  
5 the prelim and then those other things that I pointed out  
6 to Your Honor, I think it's pretty obvious from the evidence  
7 that this was a serious plot. I know that Probation when they  
8 make their recommendations they have that caveat in there  
9 saying they can consider everything but the crime itself, which  
10 I'm not sure I understand exactly why it works that way, but  
11 that's the way it works. And I would be the first -- and this  
12 goes to everybody -- I would be the first to say if this was a  
13 credit card fraud case, for most of these people their criminal  
14 history and background and et cetera don't make them somebody  
15 that would need to be detained, but in this particular case the  
16 nature of the offense is very serious. There's a serious  
17 public safety risk. And I think there's good evidence that  
18 they were pretty serious about doing it.

19 The guns and training aside, the fact that they were  
20 casing the governor's house at night and he was a participant  
21 in that is a pretty serious overt act and a step that shows  
22 someone's seriousness in going out to harm somebody else. I  
23 understand Mr. Graham's argument that he's a follower. And to  
24 be honest with you, I'm not even going to dispute that he was  
25 less of a leader than Fox. There are people here who are more

1 leaders and people who are more followers. But I don't  
2 think -- that might be pertinent to sentencing if we get to  
3 that point, but being a follower is not necessarily something  
4 that makes you less of a flight risk or less of a risk of  
5 danger to the community.

6 I do think there are reasons to believe, you know, he  
7 would stick around in a normal case, but in a case like this  
8 where you're facing such serious charges and also possibly  
9 retaliation from other people associated with the militia  
10 movement, there might be a lot of reasons why somebody would  
11 want to flee.

12 We also have the fact that in his criminal history,  
13 although it's nothing terribly serious, he had a drug offense.  
14 And the drugs is not the issue, the issue is that his probation  
15 was revoked for not following the court's orders, which I think  
16 we have to consider.

17 And the previous conviction that he has, which I  
18 understand -- I suppose was nullified under the Holmes Youthful  
19 Trainee Act or something along those lines was for home  
20 invasion. Which, again, it's just a similarity between that  
21 and what was planned in this particular case that's concerning.  
22 So I think given the circumstances as a whole, it's a little  
23 too much of a risk to let him be out on bond, Your Honor.

24 *THE COURT:* And I take it you're moving on both  
25 bases, risk of flight and dangerousness to the community?

1           *MR. KESSLER:* Yes, Your Honor, although I think the  
2 danger to the public is the bigger one.

3           *THE COURT:* And do you agree with Mr. Graham that  
4 there is no presumption in this case?

5           *MR. KESSLER:* Yeah, I'm not sure where that came  
6 from. I don't think it's a presumption case myself. You know,  
7 I could be wrong. Probation could know something I don't, but  
8 I don't think it is a presumption case.

9           *MR. GRAHAM:* Your Honor, regarding the presumption  
10 issue, I probably created, you know, a tempest in a teapot  
11 there by worrying that it might be a presumption case because  
12 of the nature of the charge. So I agree the government has  
13 never suggested that it was a presumption case. I was erring  
14 on the safe side, if you will. So it's not a presumption case.

15           In regard to -- in regard to the two points for the  
16 Court to consider: Flight. There is absolutely no evidence  
17 that he would be a flight risk. He is a property owner. He  
18 has -- he's a life-long Michigan resident. He has all of his  
19 connections here in Michigan. He's not going to run because of  
20 potential retaliation. There is just, the way I see it, no  
21 evidence whatsoever regarding flight, him being a flight risk.

22           Regarding the danger to the community I would like to  
23 take on, head-on the claim by the government that somehow prior  
24 convictions should impact the Court's decision. Someone who  
25 has made a mistake -- I'm not sure that there's a better case

1 that you could ever see in terms of someone doing the right  
2 thing to put their life on track. He was an addict. It is  
3 undisputed. He got into trouble. Six or seven years ago as  
4 part of the Holmes Youthful Trainee Act he got a sentence of  
5 probation and he got a few months in jail.

6 When he entered jail, since that date in 2013 or '14,  
7 he has been sober. He has been sober. So he successfully  
8 completed HYTA and then he went back and a circuit court  
9 expunged the prior possession case which came in the throes of  
10 addiction. So he stands before you, unlike almost anyone else  
11 who had had that background, having been completely sober for  
12 six or seven years and being such a model -- once he got on  
13 track -- such a model at trying to correct his situation that  
14 he has gone into the profession of being a peer advocate. And  
15 in fact works for the hospital. Works for other entities.  
16 Works with the 6th Circuit Court in Pontiac advising  
17 probationers.

18 So in terms of -- in terms of considering that he  
19 should be detained because of the past when he has done  
20 everything a human being can do for six or seven years to  
21 correct the situation, I really want to take that head-on  
22 because I'm not sure what else anybody in the world could ever  
23 do in regard to that.

24 Not a hint -- I mean, put this case -- and I  
25 understand the seriousness of this case aside -- but if someone

1 is a danger because of what happened in the past, certainly we  
2 normally see hints of that. Not not a hint of any trouble  
3 again.

4 And I'll move from that directly to this -- to the  
5 charge here. Because it is an extremely serious charge. No  
6 question about that. It seems clear that the charge itself is  
7 very serious. It seems equally clear that his role as not  
8 being a leader seems to be -- seems to be undisputed. And the  
9 real question becomes based on everything that we know now, or  
10 at least the way I evaluate the statute, based on everything we  
11 know now, going forward is he a threat to others? Is he a  
12 threat to others?

13 And I want to be as candid as I can be with the  
14 Court, there were statements made by --

15 *(Whereupon there was a technical issue in the courtroom)*

16 **THE COURT:** We'll take a minute. We're going to take  
17 a 10-minute break and figure out how to mute the participants.

18 **MR. GRAHAM:** I hope he's not criticizing my argument.

19 **THE COURT:** I'm not sure. I didn't understand  
20 anything that was said there. So rest assured that will not  
21 affect me. But let's take a five-minute break and see if we  
22 can figure out the technical issue here. I'm sorry to  
23 interrupt your flow, Mr. Graham.

24 **THE CLERK:** All rise, please.

25 *(Recess taken from 2:19 p.m. to 2:41 p.m.)*

1           *THE COURT:* All right. We went off the record there  
2 for a few minutes because of a disruption on the conference  
3 line that we have open to assure greater public access to these  
4 proceedings. We're hoping that that is fixed now. But in any  
5 case, we will proceed.

6           Mr. Graham, I'm sorry you got cut off mid argument.

7           *MR. GRAHAM:* I'll go ahead, then, Your Honor. Thank  
8 you.

9           I think I had worked my way through to the point  
10 where I was going to talk specifically about the charges in the  
11 Complaint and why the nature of those charges alone do not  
12 establish a basis for detention because I think the other  
13 points have been covered.

14           And I would like to make one specific point out of  
15 my -- out of my written proffer, and that is that Mr. Franks is  
16 a Type 1 diabetic. He's been a Type 1 diabetic. He is at high  
17 risk regarding COVID. And there are serious challenges -- and  
18 no criticism of the way he's being cared for by the  
19 Marshal Service -- but there are very significant challenges  
20 that go with controlling blood sugar in a setting when someone  
21 is a severe diabetic. He had readings before he was  
22 arrested -- because he takes both the 24-hour insulin and then  
23 a short quick-acting insulin when he has a meal -- and his  
24 normal readings were around a hundred. I mean controlled  
25 around a hundred. And now they range from mid 200s to 400.

1 Again, no criticism of anyone. It's just a big, big challenge  
2 but something that's important for his overall health, and  
3 certainly something he can control aside from the COVID suspect  
4 category then or additional risk category.

5 So I'd like to confront just exactly why the nature  
6 of the charge against him does not establish that he would be a  
7 danger going forward, going forward. And I want to be as  
8 candid as I can with the Court. Statements that have been  
9 quoted, and including, including even if he was on the  
10 recording that was admitted as Exhibit 18, you know,  
11 Your Honor, there's somewhere between just stupid talk and who  
12 knows what, but the question becomes if there was something  
13 like that, why does it mean that he would be a danger going  
14 forward? The Court has a lot of information and evidence about  
15 him, including, including the Probation -- the one thing that I  
16 feel confident in saying, everything I said in my written  
17 proffer essentially was corroborated by the Pretrial Services  
18 investigation. I think that investigation was thorough and  
19 spot-on in terms of its -- in terms of its findings. And I've  
20 made my point about anything I disagree with about a prior  
21 conviction.

22 So whatever happened, whatever happened, I don't  
23 believe that that alone indicates he would be a danger when the  
24 Court could impose a condition such as location monitoring.  
25 And Probation/Pretrial Services has recommended that, and I

1 agree with that wholeheartedly. If you add the condition of  
2 location monitoring to the fact that there are no weapons in  
3 the house. They were all taken during the search. They  
4 wouldn't be there anyway because they would not be appropriate  
5 there at this point in time. There are no weapons. There is  
6 nothing else of danger in that house. There could be location  
7 monitoring. We've spelled out his background in detail in the  
8 proffer. And, you know, Probation does put in the essentially  
9 disclaimer that it's not considering presumptions, and we know  
10 presumption doesn't apply, and it's not considering the  
11 seriousness of the charge or the potential penalty, but it's a  
12 thorough report and one I agree with completely. And I think  
13 we have supported their recommendation with what we've offered  
14 and with what he has done to try to make himself and his  
15 situation better, and so my request to the Court is to grant  
16 bond with those conditions and let us go forward from there.  
17 So that's my request. Thank you.

18 *THE COURT:* Thank you.

19 Mr. Kessler, you have the burden, so you can have the  
20 last word if you want any further argument.

21 *MR. KESSLER:* Your Honor, actually something counsel  
22 just said prompts me to want to put the agent back on for just  
23 a moment about something that has to do with weaponry, and I'll  
24 make it short.

25 *THE COURT:* All right.

*DIRECT EXAMINATION OF RICHARD TRASK*

1           MR. KESSLER: Agent Trask.

2           THE COURT: You're still under oath, sir.

3                               DIRECT EXAMINATION

4       BY MR. KESSLER:

5       Q. Agent Trask, we're going to make this brief, but we just  
6       heard a proffer about there being no weapons still with this  
7       particular defendant. It is possible in your experience to get  
8       weapons in other ways than buying them through legitimate  
9       means? Correct?

10      A. Yes.

11      Q. And I'm not just talking about buying one on the street.  
12      Can you briefly tell the judge what a ghost gun is?

13      A. A ghost gun is basically a weapon that is created that has  
14      no serial number or no way to track the weapon. It's not  
15      registered with any agencies.

16      Q. All right. And this isn't just theoretical here. Do you  
17      know something about this particular defendant and ghost guns  
18      in this case?

19      A. Yes, we do.

20      Q. Can you please tell the Court what that is.

21      A. I do not have specific dates, but it was very recent, the  
22      defendant requested Ty Garbin and the CHS to help him in  
23      creating two pistols unregistered and then also drilling out a  
24      lower receiver. Those weapons were intended for an individual  
25      who is a friend of Kaleb Franks who has a previous conviction.

*DIRECT EXAMINATION OF RICHARD TRASK*

1 He is a dealer. A drug dealer. And they believe that he was  
2 under surveillance, and so they were going to create those  
3 weapons and provide them back to him. They were going to sell  
4 them at a rate of three times what they cost to make. Those  
5 weapons were made and provided -- I believe at this time  
6 provided back to Kaleb Franks. At least the two pistols were.  
7 Those weapons were found in either a search of Kaleb Franks' or  
8 Ty Garbin's homes.

9 Q. And so Mr. Franks was the one -- you're aware of this  
10 whole thing because the CHS was involved in this plot, right?

11 A. That's correct.

12 Q. He was enlisted by Mr. Franks to help make one of the  
13 guns?

14 A. That's correct.

15 Q. One you said a lower receiver. That was for an AR-15  
16 semiautomatic assault rifle, correct?

17 A. That's correct.

18 Q. And then the other two other ones were 9-millimeter  
19 semiautomatic pistols that this defendant obtained through  
20 something other than a federally licensed firearms dealer?

21 A. The way I understand it is he obtained those parts and  
22 provided them to Ty Garbin for putting together the pistols for  
23 the deal.

24 Q. And then Ty Garbin gave them back and they were actually  
25 seized at his house, correct?

*CROSS-EXAMINATION OF RICHARD TRASK*

1 A. The last -- if I'm recalling correctly, they were provided  
2 back to Kaleb Franks and those weapons were seized and there is  
3 no serial number attached to them.

4 Q. And that could be done again, right, getting those parts  
5 over the internet or through some other gray market dealer?

6 A. That's correct.

7 *MR. KESSLER:* I have nothing further, Your Honor.

8 *THE COURT:* Mr. Graham, you may inquire.

9 CROSS-EXAMINATION

10 *BY MR. GRAHAM:*

11 Q. Agent, whatever those items were, they were seized, they  
12 are in the possession of law enforcement, correct?

13 A. They -- they are.

14 Q. And what you're talking about regarding those items,  
15 you're talking about a story that's told by someone else to  
16 someone else and then relayed to you, right?

17 A. No, that's through the chats on Threema he discusses it,  
18 and then they actually conduct a surveillance trip to go out  
19 and conduct where they are going to do the deal, as they say.

20 Q. And who is involved?

21 A. Kaleb Franks, Ty Garbin, and the CHS.

22 Q. Just three of them?

23 A. Yes.

24 Q. When you searched his house, when law enforcement searched  
25 his house -- I shouldn't say you -- law enforcement took

1 everything that might be an item of danger, correct?

2 A. I do not have the report back, full report back, but that  
3 is what I understand, yes.

4 Q. Sure. Policy would be anything that looks like it might  
5 relate to the crime, obviously also being firearms here, was  
6 seized at that time, right?

7 A. That is what I understand, yes.

8 Q. And as best you know, there's nothing in his house now  
9 that qualifies as a gun part or something like that?

10 A. I'm not aware of anything at this point.

11 MR. GRAHAM: Okay. Thank you.

12 Thank you, Your Honor.

13 THE COURT: Mr. Kessler, anything further?

14 MR. KESSLER: That's the last thing I would add to my  
15 argument, Your Honor, I think you understand, I mean it shows  
16 that he's not necessarily just going to abide by the law. He's  
17 grinding serial numbers off of those guns, Your Honor.

18 THE COURT: Because we just heard some new testimony  
19 after you had a chance to argue, if you want to be heard on  
20 that, you can as well, Mr. Graham.

21 MR. GRAHAM: Well, Your Honor, I guess I don't  
22 understand, because he just said it meant that serial numbers  
23 were somehow ground off, and I didn't take that to be the case.  
24 My understanding was we're talking about making, making a  
25 weapon. And I guess my real point, though, for the Court is,

1 it happened, it's done. It's -- they seized the items. And  
2 it's not going to happen again. It certainly could be the  
3 subject of some additional monitoring. So that would be my  
4 point.

5 *THE COURT:* All right. Thank you,  
6 Special Agent Trask.

7 *THE WITNESS:* Thank you.

8 *THE COURT:* This matter is governed by the Bail  
9 Reform Act of 1984. Under the Bail Reform Act I have to  
10 release the defendant on bond unless I find either by a  
11 preponderance of the evidence that he is a risk of flight or  
12 nonappearance or by clear and convincing evidence that he is a  
13 danger to the community.

14 I am required to consider the least-restrictive  
15 condition or combination of conditions that will reasonably  
16 assure his appearance and protect the community, and I have  
17 considered each of the possible conditions set out in the  
18 statute. I agree that this is not a presumption case and in  
19 any case, even if it were, the burden would still be on the  
20 government on both bases.

21 In determining whether there are sufficient  
22 conditions to reasonably assure his appearance and the safety  
23 of the community, I'm required to consider a number of factors,  
24 including the nature and circumstances of the offense charged,  
25 the weight of the evidence, and the Sixth Circuit has held that

1 that is the weight of the evidence of dangerousness or risk of  
2 flight, the history and characteristics of the defendant, and  
3 the nature and seriousness of the danger to any person or the  
4 community that would be posed by the defendant's release.

5 Here I agree with Mr. Graham that there is no --  
6 insufficient evidence at least to suggest that there is a risk  
7 of flight, and so I'm confining my remarks to dangerousness to  
8 the community or any other person in the community.

9 I also agree with both counsel really that the  
10 primary focus of my inquiry has to be the offense conduct in  
11 this case. The information that was pulled together by  
12 Pretrial Services, which mirrors in most respects what is in  
13 Mr. Graham's memorandum to the Court, indicates that absent a  
14 serious risk to the community, risk of danger to the community  
15 by the defendant, the defendant would be an appropriate  
16 candidate for bond in this case.

17 I do agree that the prior home invasion second  
18 degree, which was expunged under -- or dismissed under HYTA is  
19 somewhat relevant given the allegations in this case that  
20 involved the kidnapping of Governor Whitmer, however, I don't  
21 place a great deal of weight on any of that based on  
22 Mr. Franks' fairly clearly demonstrated improvement and work.  
23 I note that he is employed. His prior substance abuse has  
24 apparently not repeated. And the focus of the inquiry really  
25 has to be on the dangerousness to the community that is posed

1 as a result of the offense conduct, which I'm going to go  
2 through in a minute.

3 I do want to respond to Mr. Graham's argument that he  
4 wonders why this is a danger going forward. First, the only  
5 ability that I have -- and I don't have a crystal ball, I don't  
6 have any ability to see the future -- but the best predictor of  
7 future behavior is past behavior. And although this particular  
8 plot has been unearthed and disrupted, it does not change the  
9 fact that there is apparently a movement that -- in which  
10 Mr. Franks is alleged to have participated that plots the  
11 overthrow of the government by force. And so that it has --  
12 that this particular plot has been disrupted does not mean that  
13 that could not continue in the future.

14 In addition, I do note the agent's testimony  
15 regarding the creation of the unregistered firearms for a  
16 person who could not buy them legally. I note that that does  
17 indicate, is evidence of the ability to begin again in terms of  
18 this plot against the government.

19 So just to go through some of the evidence that I  
20 have related now to the plot, since that is the primary focus  
21 of the inquiry here. The affidavit for the Complaint lays out  
22 a number of instances in which Mr. Franks and others were  
23 working together to conspire to attempt this kidnapping. And  
24 as all of the counsel have -- defense counsel have noted along  
25 the way, many of these incidents in isolation would not be

1 either illegal or particularly concerning, but it is the  
2 repeated involvement in the group together in training  
3 exercises coupled with clear discussions of this plot to kidnap  
4 Gretchen Whitmer and then also the overt acts of taking steps  
5 to do surveillance, for instance, in order to continue the plot  
6 or advance the plot that the Court finds concerning.

7           So with regard to Mr. Franks, the first allegation  
8 at least that I note in the Complaint is on June 28th where  
9 there was this tactical training exercise in Munith, Michigan,  
10 that Mr. Franks was involved with. Shortly after that on  
11 July 7 Mr. Franks says that he's not cool with the offense of  
12 kidnapping and is just there for the training. If he had not  
13 been involved in conversations going forward regarding the  
14 kidnapping, I would take that and credit it as an indication  
15 that he did not agree to what was going forward. However, as I  
16 recite these facts, I think it demonstrates that he did not  
17 hold to that position.

18           July 10 and 12 Mr. Franks is present at a field  
19 training exercise in Wisconsin. He brought and fired a rifle  
20 with a silencer while others constructed IEDS that were tested.  
21 Now, I also take Mr. Graham's point that there's no evidence  
22 that that silencer was illegal.

23           There is a discussion on July 18 that Mr. Franks is  
24 part of in Ohio where the attendees at the exercise discussed  
25 attacking a Michigan State Police facility. And any number of

1 group chats along the way that I won't touch on all of them.

2 That brings us to August 9 where Mr. Franks  
3 participated again in a tactical training in Munith. There's  
4 some discussion of kidnapping. There's discussion of gathering  
5 information about the governor's primary residence in Lansing  
6 and destroying her boat.

7 In a follow-up chat Franks indicates, "Okay, sounds  
8 good. I'm in for anything as long as it's well-planned."

9 On August 23 the group meets at Harris's residence in  
10 Lake Orion and is concerned about infiltration by law  
11 enforcement. That's demonstrated in the text messages as well.  
12 And Mr. Franks is involved in that discussion of being  
13 concerned about law enforcement infiltration.

14 In the August 23 meeting Franks says "I'm ready to  
15 get it on." And Franks indicates that he spent \$4,000 on a  
16 helmet and night-vision goggles. The group discusses  
17 surveilling the governor's vacation home.

18 On August 30 Fox shares photos in an encrypted chat  
19 with Franks and other people. There's some discussion,  
20 although not by Mr. Franks, of blowing up a bridge.

21 September 12 and 13 is the exercise at Mr. Garbin's  
22 property in Luther where Mr. Croft constructs an IED and  
23 detonates it. And there's more discussion of the plot. And  
24 Mr. Franks is included in the nighttime surveillance. On the  
25 way back Mr. Franks is credited with saying "We're doing all

1 the reconnaissance work, so it should go smooth."

2 On September 13 the group gathers again, including  
3 Mr. Franks, and it's confirmed that this is the group that's  
4 going to kidnap Governor Whitmer. And they agree to conduct a  
5 final training exercise in late-October.

6 On September 14 there's some discussion of not  
7 wanting that last exercise to be late in October because it's  
8 too late, but the group is discussing, agreeing, or using the  
9 time to raise money for explosives and other supplies.

10 On September 17 there's the discussion about not  
11 wanting to be involved in the protest at the Capitol so as to  
12 avoid public exposure. And Franks is involved in that as well.

13 And then, of course, on October 7 Mr. Franks is in  
14 the group that goes to meet the what turns out to be an  
15 undercover officer to make a payment on explosives and tactical  
16 gear.

17 I, as I said, credit the counsel's suggestion that  
18 the training itself is not illegal, the possession of firearms  
19 is itself not illegal, but it is the plot along the way that is  
20 clearly very dangerous. This is a very, very serious crime.  
21 And as I said, Mr. Graham's argument is that there can be --  
22 there are ways to stop this from being a danger going forward,  
23 but even with location monitoring, that is something that can  
24 simply be cut off of an ankle. It is not something that will  
25 necessarily keep Mr. Franks in his home and out of trouble.

1           Moreover, his -- the ease with which he could acquire  
2 additional weapons makes, in the Court's opinion, there to be  
3 clear and convincing evidence that he remains a danger to the  
4 community.

5           I do share Mr. Graham's concern about Mr. Franks'  
6 diabetes and would ask the parties to keep the Court apprised  
7 if that becomes an issue in terms of his treatment while in  
8 marshal custody, but I do find by clear and convincing evidence  
9 that there is no condition or combination of conditions that  
10 will reasonably assure the safety of the community.

11           I haven't gone through the government's exhibits, the  
12 text messages and other exhibits that were provided, although  
13 those also, I believe, support the conclusion that Mr. Franks  
14 is a danger to the community.

15           So, Mr. Franks, what happens next: You will remain  
16 in marshal custody, probably in Newaygo County, pending the  
17 trial in this matter. There will be continued proceedings  
18 related to the preliminary hearing later this week. And from  
19 that point if there is probable cause found, then you would be  
20 bound over for further proceedings before the grand jury.

21           Mr. Franks, I'm sure you don't agree with my  
22 decision. Do you understand everything that happened in court  
23 today?

24           *DEFENDANT FRANKS:* Yes, Your Honor.

25           *THE COURT:* All right. Anything else we have to take

1 up on this defendant, Mr. Kessler?

2 MR. KESSLER: No, Your Honor. Thank you.

3 THE COURT: Mr. Graham.

4 MR. GRAHAM: No, Your Honor.

5 THE COURT: All right. We'll be adjourned.

6 THE CLERK: All rise, please. Court is adjourned.

7 *(Proceeding concluded at 3:03 p.m.)*

8 \* \* \* \* \*

9 I certify that the foregoing is a correct transcript  
10 from the record of proceedings in the above-entitled matter.

11 I further certify that the transcript fees and format  
12 comply with those prescribed by the court and the Judicial  
13 Conference of the United States.

14  
15 Date: October 27, 2020

16  
17 **/s/ Glenda Trexler**

18 Glenda Trexler, CSR-1436, RPR, CRR  
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*EXAMINATION INDEX*

*PAGE*

<i>DIRECT EXAMINATION BY MR. KESSLER:</i>	<i>15</i>
<i>CROSS-EXAMINATION BY MR. GRAHAM:</i>	<i>17</i>